

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Uniform Construction Code**

**Permit Surcharge Fees**

**Adopted Amendment: N.J.A.C. 5:23-4.19**

Proposed: March 17, 2003 at 35 N.J.R. 1361(a).

Adopted: May 22, 2003 by Susan Bass Levin, Commissioner, Department of  
Community Affairs.

Filed: , 2003 as R. 2001, d. , **without change.**

Authority: N.J.S.A. 52:27D-124.

Effective Date: , 2003.

Expiration Date: January 15, 2008.

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**SUSAN BASS LEVIN, Commissioner**

**Summary of Public Comments and Agency Responses:** **Comments were received** from Glenn Franzoi, Construction Official of the Township of Hamilton, Atlantic County, from Tom DiGangi, Jr., Director, Government Affairs, of the Building Contractors Association of New Jersey (BCANJ) and Patrick J. O’Keefe, Executive Vice-President and Chief Executive Officer of the New Jersey Builders Association.

COMMENT: It is unfair to impose this fee increase on all permit applicants in the State. Growth within the Pinelands Development Area is already controlled by the Pinelands Commission. Permit applicants in Pinelands municipalities should not be required to pay the cost of regulating growth in areas of the State not already subject to such controls.

RESPONSE: “Smart growth” is of benefit to all New Jerseyans. What happens in other parts of the State affects all of us, regardless of where we live. Consequently, it is in the best interest of all of our citizens to have effective programs to guide development so that occurs in appropriate locations.

COMMENT: Revenue raised from this surcharge could better be used to increase staffing at local construction code enforcing agencies..

RESPONSE: It is up to the municipality to establish fees that are sufficient to pay the necessary costs incurred in maintaining a local enforcing agency. The purpose of the surcharge is to pay costs incurred by the Department in connection with construction code enforcement. The Department believes that guiding construction so as to promote “smart growth” is a purpose within the scope of the surcharge fee.

COMMENT: Increased fees will increase the cost of construction. This will hinder the creation of opportunities for redevelopment and, consequently, of jobs. The fee increase in the amount of \$2.7 million would be in addition to recent increases in the corporate business tax that have affected the construction industry and would therefore do nothing to enhance the State’s economy.

RESPONSE: The Department believes that the promotion of “smart growth” will result in more efficient use of resources available for development and will therefore have a beneficial economic effect.

COMMENT: The purpose of the increase is not to improve services to the construction community, such as enhancing the skills of personnel or increasing the efficiency of permitting and inspections. A fee increase for these purposes, while it might be difficult for developers and contractors to absorb, might be tolerable. Promotion of “smart growth” is not, contrary to the Department’s assertion, a construction-related function; rather, it is a planning function not tied to construction permitting and inspection. For that reason, BCANJ, while it appreciates the good work of the Department, cannot support the increase in the surcharge fee

RESPONSE: The Department thanks BCANJ for its statement of appreciation for the work that it does. It does not, however, agree that the definition of construction-related functions must necessarily be drawn as narrowly as BCANJ would have us do. From the standpoint of the overall needs of the State, planning to promote construction where it is most appropriate is a necessary construction-related function and, in the judgment of the Department, one that can properly be funded with surcharge fund revenues.

COMMENT: The proposal is *ultra vires* the Uniform Construction Code Act and would be impermissible even if the Act were amended because the functions that it would

be used to finance are not relevant to the enforcement and administration of the permit. Inasmuch as N.J.S.A. 52:27D-124.1, which establishes the Uniform Construction Code Revolving Fund, limits its functions to the education and certification of code enforcement personnel, any other use is outside the authority granted to the Department under the Act. The proposed surcharge would be a discriminatory tax imposed upon persons requiring building permits in order to fund programs for which the Legislature is not providing sufficient funding from general tax revenues. As such, it is an abuse of regulatory authority.

RESPONSE: As has been indicated, it is the position of the Department that planning for “smart growth” is a construction-related function that may properly be funded with permit surcharge revenue, and that there is a sufficient relationship to construction so that the surcharge would continue to be a fee, rather than a tax. Though the Uniform Construction Code Revolving Fund was limited by N.J.S.A. 52:27D-124.1 to uses having to do with training and certification, there is language in the FY 2004 Appropriations Act that would allow the use of revenue in that fund for “smart growth” purposes. Since FY1991, there has been similar language in each annual Appropriations Act that extended the uses to which revenue in the Revolving Fund could be applied and, in each case, these later statutory provisions have governed, since they superseded earlier statutory enactments.

Appropriation of this revenue for purposes of funding a program to promote “smart growth” is a matter that is up to the Legislature, not to the Department. The added revenue that would be raised as a consequence of the adoption of this proposal can only be spent for such a purpose if the Appropriations Act so provides. The rule proposal itself only provides for increasing the permit surcharge fee, which is something that is clearly within the authority of the Department to do.

### **Federal Standards Statement**

No Federal standards analysis is required because this amendment is not being adopted under the authority of, or in order to implement, comply with or participate in any program established under, Federal law or a State statute incorporating or referring to Federal law, standards or requirements.